

Serial No.: 09/970,945
Examiner: Matthew F. DeSanto
Art Unit: 3763

REMARKS

Claims 1-7, 33-36, 48-59, 67 and 73-90 remain in the application. By this amendment claim 1 has been amended, and claims 73-90 have been added. The present application as originally filed supports this amendment. No new matter has been added.

Claim Rejections Based on Kriesel et al.

Claims 1-7, 48-59 and 67 have been rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,527,744 to Kriesel et al. Applicant respectfully traverses this rejection.

Independent claim 1, from which claims 2-7, 48-59 and 67 depend, has been currently amended to more clearly define the present invention. Claim 1 recites a system for delivering fluid to a patient including, in combination, a fluid delivery device, a remote control device having user output components (e.g., a graphical user interface), and at least one data collection assembly adapted to measure, monitor, calculate, and/or store a physiologic parameter of a patient, and wherein the output components of the remote control device display data from the data collection assembly.

Kriesel et al. shows an embodiment in FIGS. 42-47 a fluid delivery apparatus 250 for implantation within a patient for infusing medicinal fluids into a patient. The apparatus 250 includes a sensor 264, as shown in FIG. 42 of Kriesel et al., and telemetry 242, as shown in FIG. 47 of Kriesel et al. Kriesel et al., however, does not disclose a remote control device displaying data from the sensor. Kriesel et al., therefore, does not anticipate or make obvious a system including, in combination, a fluid delivery device, a remote control device, and at least one data collection assembly, and wherein output components of the remote control device display data from the data collection assembly, as recited in claims 1-7, 48-59 and 67 of the present application.

Serial No.: 09/970,945
Examiner: Matthew F. DeSanto
Art Unit: 3763

Applicant, therefore, respectfully submits that independent claim 1 as currently amended is not anticipated by Kriesel et al. Since claims 2-7, 48-59 and 67 depend from independent claim 1, they include the limitations of the independent claim and also are not anticipated by Kriesel et al. Applicant, therefore, respectfully requests reconsideration and withdrawal of the rejection of claims 1-7, 48-59 and 67 under 35 U.S.C. 102(e) as being anticipated by Kriesel et al.

Claim Rejections Based on Lebel et al.

Claims 1-7, 33-36 and 55-59 have been rejected under 35 U.S.C. 102(e) as being anticipated by Published U.S. Patent Application No. US 2002/0065454 to Lebel et al. Applicant respectfully traverses this rejection.

Lebel et al. shows a medical delivery system that controllably supplies insulin to the body of a patient afflicted with diabetes and includes a medical device 2 and an external communication device 32. While Lebel et al. does suggest adding a glucose sensor to the medical device 2 (e.g., see ¶ 70 of Lebel et al.), Lebel et al. does not disclose a remote control device displaying data from the sensor. Lebel et al., therefore, does not anticipate or make obvious a system including, in combination, a fluid delivery device, a remote control device, and at least one data collection assembly, and wherein output components of the remote control device display data from the data collection assembly, as recited in claims 1-7, 33-36 and 55-59 of the present application.

Applicant, therefore, respectfully submits that independent claim 1 as currently amended is not anticipated or suggested by Lebel et al. (whether considered alone or in combination with Kriesel et al.) Since claims 2-7, 33-36 and 55-59 depend from independent claim 1, they include the limitations of the independent claim and also are not anticipated by Lebel et al. Applicant, therefore, respectfully requests reconsideration and withdrawal of the rejection of claims 1-7, 33-

Serial No.: 09/970,945
Examiner: Matthew F. DeSanto
Art Unit: 3763

36 and 55-59 under 35 U.S.C. 102(e) as being anticipated by Lebel et al.

Claim Rejections Based on Gonnelli et al.

Claims 1-7, 33-36, 48-59 and 67 have been rejected under 35 U.S.C. 102(e) as being anticipated by Published U.S. Patent Application No. US 2002/0169416 to Gonnelli et al.

Applicant respectfully traverses this rejection because Gonnelli et al. does not meet the definition of prior art as defined in 35 U.S.C. 102(e). Under 35 U.S.C. 102(c)(1) a person shall be entitled to a patent unless the invention was described in an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent. Since Gonnelli et al. has an earliest priority date of November 30, 2000, that is later than the priority date of October 4, 2000, of the present application, then Gonnelli et al. does not qualify as prior art under 35 U.S.C. 102(e).

Since Gonnelli et al. does not qualify as prior art with respect to the present patent application, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1-7, 33-36, 48-59 and 67 under 35 U.S.C. 102(c) as being anticipated by Gonnelli et al.

Claim Rejections Based on Mann et al.

Claims 1-7, 33-36, 48-50 and 55-59 have been rejected under 35 U.S.C. 102(e) as being anticipated by Published U.S. Patent Application No. US 2002/0107476 to Mann et al. Applicant respectfully traverses this rejection.

Mann et al. shows an infusion system including an external infusion device 10 and a remote commander 12. Referring to FIGS. 1 and 2 of Mann et al., the external infusion device 10 is an external infusion pump that is programmed through a keypad 24 on the housing 20 or by commands received from the RF programmer 12 through a transmitter/receiver 26. Feedback

Serial No.: 09/970,945
Examiner: Matthew F. DeSanto
Art Unit: 3763

from the external infusion device 10 on status or programming changes are displayed on an LCD 28 and/or audibly through a speaker 30. "In alternative embodiments, the keypad 24, LCD 20, and the speaker 24 may be omitted from the external infusion device, and all programming and data transfer is handled through the RF programmer 12." (§ 0042 of Mann et al.) A remote commander 12' may also include an LCD 150, as shown in FIG. 4 of Mann et al.

Mann et al., however, does not disclose a remote control device displaying data from a sensor. Mann et al., therefore, does not anticipate or make obvious a system including, in combination, a fluid delivery device, a remote control device, and at least one data collection assembly, and wherein output components of the remote control device display data from the data collection assembly, as recited in claims 1-7, 33-36, 48-50 and 55-59 of the present application.

Applicant, therefore, respectfully submits that independent claim 1 as currently amended is not anticipated or suggested by Mann et al. (whether considered alone or in combination with Kriesel et al. and/or Lebel et al.) Since claims 2-7, 33-36, 48-50 and 55-59 depend from independent claim 1, they also are not anticipated by Mann et al. Applicant, therefore, respectfully requests reconsideration and withdrawal of the rejection of claims 1-7, 33-36, 48-50 and 55-59 under 35 U.S.C. 102(e) as being anticipated by Mann et al.

Election/Restriction Requirement

Claims 1-7, 33-36, 48-59 and 67 are readable on Species B, Fig. 2, and remain in the application.

Claims 8-32, 37-47, 60-66 and 68-72 were previously cancelled as being drawn to the non-elected species. However, applicant respectfully submits that the generic claim, claim 1, is allowable. Accordingly, claims 8-32, 37-47, 60-66 and 68-72 will be reinstated as new claims upon an indication of allowance of claim 1.

Serial No.: 09/970,945
Examiner: Matthew F. DeSanto
Art Unit: 3763

New Claims 73-90

Claims 73-90 have been added to the present application. Independent claim 73, from which claims 74-90 depend, is simply original claim 33 re-presented in independent form to include claim 1 as originally filed. Since independent claim 73 simply comprises original claim 33 in independent form, a new search by the examiner should not be necessitated by the addition of claims 73-90.

Applicant submits that none of the cited prior art: Kriesal et al., Lebel et al. and Mann et al., whether considered alone or in combination, discloses or suggests a fluid delivery device having a transcutaneous access tool that is extendable from within the fluid delivery device for penetrating the patient's skin, as recited in claim 73. Applicant, therefore, respectfully submits that independent claim 73 is neither anticipated by, nor rendered obvious in view of Kriesal et al., Lebel et al. or Mann et al., whether considered alone or in combination, and respectfully requests an indication of allowance of claims 73-90.

Conclusion

In view of the amendments and remarks submitted herein, applicant believes that all claims pending in the application are in condition for allowance and respectfully request such allowance. If a telephone conference will expedite prosecution of the application the Examiner is invited to telephone the undersigned.

RECEIVED
CENTRAL FAX CENTER

OCT 22 2003

OFFICIAL

Serial No.: 09/970,945
Examiner: Matthew F. DeSanto
Art Unit: 3763

No fee is believed to be required; however, if a fee is required, or otherwise necessary to cover any deficiency in fees already paid, authorization is hereby given to charge our deposit account no. 50-1133.

Respectfully submitted,
McDermott, Will & Emery

Date: 10-22-03



Mark G. Lappin, P.C., Reg. No. 26,618
Jeffrey J. Miller, Reg. No. 39,773
Attorneys for Applicants
28 State Street
Boston, MA 02109-1775
Telephone: (617) 535-4000
Facsimile: (617) 535-3800